

the suture in the second longitudinal direction along the first aperture until pressure is applied to the suture in the second latitudinal direction, thereby disengaging the locking means and permitting the movement of the suture in the second longitudinal direction along the first aperture, and wherein each ridge formed on the second aperture surface is so formed as to facilitate the movement of a suture in the first longitudinal direction and the first latitudinal direction along the second aperture and oppose the movement of the suture in the second longitudinal direction along the second aperture until pressure is applied to the suture in the second latitudinal direction, thereby disengaging the locking means and permitting the movement of the suture in the second longitudinal direction along the second aperture, wherein the first longitudinal direction along the first aperture and the second longitudinal direction along the second aperture are directed to the upper surface of the apparatus body.

In Claim 12, line 1, delete "2" and insert therefor -- 1 --.

#### REMARKS

This is in response to the Official Action mailed July 22, 1999. This response is filed timely upon mailing with an executed certificate of mailing on or before October 22, 1999. 37 C.F.R. §§ 1.7, 1.8, 1.117 and 1.136. Additionally, the present Amendment has not altered the total number of claims in the Application. Accordingly, it is believed that this Amendment does not occasion any additional fees. However, should any further fees be required, please charge the same to deposit accountant number 03-3355.

Applicant acknowledges that informal drawings are acceptable for examination purposes only. Applicant will submit formal drawings upon receipt of Notice of Allowance.

The Examiner's indication that claims 6 and 14-34 are allowable is appreciatively acknowledged.

Claims 1-3, 9, 11 and 12 have been amended. Support for the Amendments to claims 1-3, 9, 11 and 12 is found in the specification at, for example, page 14, lines 9-16.

Claim 13 has been cancelled in favor of newly added Claim 35. A review of the newly added claim and of the amended claims shows that no new matter has been introduced. Therefore, entering and approval of the amendment is respectively solicited.

Newly added claim 35 which depends upon amended claim 1 is directed to the aperture's configuration. More precisely, claim 35 claims the shape and orientation of the first and second internal surfaces of the aperture. Support for claim 35 is found in the specification at, for example, page 13, lines 6-8. This claim is believed to be allowable.

Claims 1-5 and 7-13 stand rejected under 35 U.S.C. § 102 (b) as being anticipated by Wilk, United States Patent No. 5,391,173 ("Wilk"). In making the rejection, the Examiner has contended that "[e]lements 16 in the reference are considered ridges."

It is well settled, that anticipation requires "identity of invention." *Glaverbel Societe Anonyme v. North Lake Mktg. & Supply*, 33 U.S.P.Q. 2d 1496, 1498 (Fed. Cir. 1995). Each and every element recited in a claim must be found in a single prior art reference and arranged as in the claim. *In Re Marshall*, 198 U.S.P.Q. 344, 346 (CCPA 1978); *Lindemann Maschinenfabrik GMBH v. American Host and Derrick Co.*, 221 U.S.P.Q. 481, 485 (Fed. Cir.

1984). There must be no differences between what is claimed and what is discussed in the prior art reference. *In Re Kalm*, 154 U.S.P.Q. 10, 12 (CCPA 1967). "Moreover, it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 U.S.P.Q. 2d 1461, 1462 (BPAI 1990).

Applicant respectfully submits that the Examiner's rejection of claims 1-5 and 7-13 under 35 U.S.C. § 102 as being anticipated by Wilk no longer applies. As noted above, claims 1-3, 9, 11 and 12 have been amended to clarify and distinguish the present invention from the device disclosed in the prior art. Contrary to the "ridges" disclosed in Wilk, the "locking means" of amended claims 1-3, 9, 11 and 12, original claims 4-8 and 10, and newly added claim 35 are capable of "engaging, and disengaging from, a suture threaded therethrough." Further, Applicant's ridges guide the suture into a channel, and lock the suture in place by creating surface friction between the device and the suture, without penetrating or damaging the suture. In fact, this invention's locking efficiency is enhanced through the device's provision for multiple points of contact.

In sharp contrast, Wilk's "barb-like protuberances 16," referred to by the Examiner as "ridges," differ from the ridges 20 of the present Application on a number of levels. First, Wilk's ridges permit the suture to pass in only "a first predetermined direction." *See Wilk* Col. 3, lines 59-63; Col. 5, lines 10-18; and Claim 1. Thus, once the Wilk device is engaged, it cannot be disengaged without cutting the suture and discarding both the suture and the device. By comparison, the ridges of Applicant's device permit the surgeon to disengage the

locking mechanism and to re-secure the suture once the desired tension and positioning is achieved.

Second, the Wilk device captures the suture only at the narrowest point of the device by penetrating the suture at one specific point. Through penetrating, rather than frictionally trapping, the suture, the potential to damage and weaken the suture increases exponentially. Further, the Applicant's ridges provide a more reliable union through multiple points of contact, rather than the single point of contact provided by the Wilk device. Accordingly, in as much as the sole consideration under § 102 is whether the claims of an Application are anticipated by a single reference, the § 102 rejection is insufficient as a matter of law, and should be withdrawn. *Marshall*, 198 U.S.P.Q. at 346; *Lindamen*; 221 U.S.P.Q. at 485.

In view of the foregoing, favorable action on the merits, including entry and approval of all amendments, reconsideration withdrawal of each objection and rejection and allowance of all claims, is respectfully solicited.

Respectfully Submitted,

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